UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

GEORGE W. HARDER	CASE NO. 95-10486
Debtor	Chapter 13

APPEARANCES:

DAFFNER and TANG Attorneys for Debtor 138 Central Avenue Albany, New York 12207	E. LISA TANG, ESQ. Of Counsel
THE MC CARTHY LAW FIRM Attorneys for Four Seasons P.O. Box 11-383 Albany, New York 12211	ROBERT F. MC CARTHY, ESQ. Of Counsel
ANDREA CELLI, ESQ. Chapter 13 Trustee 350 Northern Boulevard Albany, New York 12204	DIANE DAVIS, ESQ. Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Court has before it a motion filed by George W. Harder ("Debtor") on February 10, 2000, pursuant to § 502 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 ("Code"), seeking disallowance of the claim of Four Seasons Inn Condominium, d/b/a The Quarters at Four Seasons Inn Condominium Association ("Four Seasons"). In his motion, the Debtor also requests turnover by Four Seasons of monies paid to it by the chapter 13 trustee, Andrea Celli, Esq. ("Trustee"). Opposition to the motion was filed on March 28, 2000, on behalf of Four Seasons.

In addition to opposing the relief sought, Four Seasons argues that the Debtor's motion is untimely.

The motion was heard on April 7, 2000, and adjourned to May 12, 2000, and again to June 23, 2000, on consent of the parties.[1] On August 4, 2000, the Court heard oral arguments concerning Four Seasons' assertion that the motion was not timely filed by the Debtor. The Court reserved decision solely on the issue of the Debtor's ability to object to Four Seasons' claim after the case had been closed and payments made to Four Seasons. The Court allowed the parties and opportunity to file memoranda of law. The matter was submitted for decision on September 5, 2000.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1) and (b)(2)(A), (B) and (O).

FACTS

The Debtor filed a voluntary petition pursuant to chapter 13 of the Code on February 10, 1995. On March 30, 1995, Four Seasons filed a proof of claim asserting a secured claim of

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[1] Because of Judge Robert E. Littlefield, Jr.'s previous service as chapter 13 trustee in this case prior to his appointment as Bankruptcy Judge, Albany Division, U.S. Bankruptcy Court, N.D.N.Y., the motion was scheduled for hearing on this Court's Conflict Calendar in Utica, New York.

$6,273.21 and an unsecured claim of $1,246.59, for a total claim of $7,519.80. According to the case docket, the Debtor filed his chapter 13 plan, along with his schedules, on April 28, 1995. An Order confirming the Debtor's plan was signed on January 23, 1996. Allegedly, Four Seasons was paid $6,076.38 in full satisfaction of its claim on October 27, 1997. The case was dismissed and closed on July 21, 1998. On July 20, 1999, the Debtor filed a motion to reopen his case and to modify his plan. A hearing was held on August 5, 1999, on the Debtor's motion and on October 1, 1999, the Court signed an Order vacating the Order of dismissal and reopening the case.

ARGUMENTS

Four Seasons asserts that pursuant to Rule 307.2 of the Local Rules of the U.S. Bankruptcy Court, Northern District of New York, in effect at the time of the commencement of Debtor's case, the Debtor was required to object to Four Seasons' claim within 90 days of the Trustee's service of the "Notice of Claims Filed." Four Seasons points out that it was paid approximately three years ago, and the case was closed approximately two years ago. It contends that it relied on the fact that its claim had been allowed and paid in conducting its business with the Debtor postconfirmation.

Debtor's counsel asserts that at the time she was served with the Notice of Claims Filed, she had no reason to object to Four Seasons' claim. She contends that her client had not advised her of an alleged settlement between the Debtor and Four Seasons, which arguably would have reduced the amount of Four Seasons' claim. She makes the argument that her client should not

be prejudiced by the fact that she failed to ask the Debtor the "right question" from which she would have learned about the alleged settlement.[2] It is her position that it is within the Court's discretion to consider disallowing the claim despite the fact that more than two years has elapsed since the case was closed.

DISCUSSION

Rule 3007 of the Federal Rules of Bankruptcy Procedure requires that an objection to the allowance of a claim be in writing and filed. The Rule does not set forth any time limit for filing the objection. However, Local Rule 307.2(a), effective January 1, 1995, provides that

> [a]bsent a court order approving an extension of time, all debtor's objections to claims [in a chapter 13 case] must be filed and served within 90 days of the trustee's service of the "Notice of Claims Filed" . . . .

Debtor's counsel does not assert that either she or the Debtor were not served with a copy of the Notice of Claims Filed. Rather, it is counsel's position that there was no reason for her to object to Four Seasons' claim at the time since she was unaware of the alleged settlement.

Code § 502(j) allows the Court for "cause" to reconsider a claim that has been previously allowed or disallowed. *See In re Payless Cashways, Inc.*, 230 B.R. 120, 137 (8th Cir. BAP 1999), *aff'd* 203 F.3d 1081 (8th Cir. 2000); *In re Watkins*, 240 B.R. 735, 738 (Bankr. C.D. Ill. 1999). "A reconsidered claim may be allowed or disallowed according to the equities of the case . . . ." 11

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[2] In the case now before this Court, the Debtor is an attorney. As such, the Court would expect him to be aware of the importance of providing his counsel with full disclosure of such things as a settlement without having her ask the "right question."

U.S.C. § 502(j). The determination of whether there is "cause" to reconsider a claim pursuant to Code § 502(j) is within the Court's discretion. *Watkins*, 240 B.R. at 739, citing *In re Flagstaff Foodservice Corp.*, 56 B.R. 910 (Bankr. S.D.N.Y. 1986).

In this case, however, the Court need not reach the question of whether the Debtor has established "cause" to reconsider Four Seasons' claim. The courts have found that their authority, pursuant to Code § 502(j), to make such a determination ceases once the case is closed. *See In re Cook*, 205 B.R. 617, 622 (Bankr. N.D. Ala. 1996), citing *In re Clark*, 172 B.R. 701, 704 n. 4 (Bankr. S.D. Ga. 1994).

This case was closed more than two years ago and full payment made to Four Seasons over three years ago. As noted by the court in *Clark*,

> The entire bankruptcy process depends upon the vigilance of the parties to monitor claims made upon the estate. If the Court were to allow reconsideration of claims merely upon a showing that the debtor was asleep at the switch, there would be no finality to the bankruptcy process. As the court in *Colley*[3] observed, "[O]ld bankruptcy cases, like old soldiers, never die ...". It appears instead that they haunt the halls of the bankruptcy court until they are laid to rest. If there were no finality to the confirmation and claims allowance process, such restless spirits would likely overwhelm the entire system.

Clark, 172 B.R. at 705. Even if the case had not been closed, the unwarranted delay in seeking reconsideration of the claim and the prejudice to Four Seasons, which has allowed the Debtor the continued use of the condominium in reliance on that payment, causes the Court to conclude that the Debtor's motion should be denied.

Based on the foregoing, it is hereby

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[3] *Colley v. National Bank of Texas (In re Colley)*, 814 F.2d 1008, 1009 (5th Cir. 1987).

ORDERED that the Debtor's motion seeking disallowance of Four Season's claim is denied, and it is further

ORDERED that the Debtor's case is closed effective 30 days from the date of this Order.

Dated at Utica, New York

this 17th day of January 2001

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge